

1 believe we're talking about payments that are made afterwards and
2 are unrelated.

3 THE COURT: Right. I don't think they're relevant for
4 purposes of this motion. It might be the subject of some
5 discovery if the matter proceeds to trial if there's a dispute as
6 to the payments and the amounts made and the reasons therefor,
7 but I'm going to sustain the objection.

8 MR. ROBINSON: May I be heard briefly on that?

9 THE COURT: You may.

10 MR. ROBINSON: I would just suggest to the Court that it
11 goes to the informant's veracity. It goes to her bias and motive
12 to lie. You did hear testimony that she had -- was in the
13 process of gaining citizenship status, that she was the holder of
14 a green card, she had family members who were in the process of
15 gaining their citizenship status, and we have her in the presence
16 of federal law enforcement and receiving payments from them. And
17 so I'd suggest that it goes to her potential bias and motive to
18 lie.

19 THE COURT: All right. But the --

20 MR. ROBINSON: And it's up to --

21 THE COURT: -- identities of the individuals aren't
22 necessary. You can ask what agencies they were with. All
23 right?

24 MR. ROBINSON: Thank you, your Honor.

25 THE COURT: So the objection is sustained.

1 BY MR. ROBINSON:

2 Q And the officers who were involved with handing payments
3 over to Ms. Stewart, what agencies were they involved with?

4 A The Federal Bureau of Investigations.

5 Q And is that the only federal agency that was involved with
6 Ms. Stewart?

7 A To my knowledge, yes.

8 Q And was one of the agents Agent Hiskin (phonetic)?

9 MR. FLANNERY: Objection.

10 THE COURT: Sustained.

11 MR. ROBINSON: If I could have a moment, your Honor?

12 THE COURT: Certainly.

13 BY MR. ROBINSON:

14 Q Getting back to the arrest or the stop of Mr. Abdul-Alim.
15 You indicated that the police officers, Berrios and Sowers, first
16 communicated to you that nothing was found, that you then
17 communicated to them that they should check his underwear. And
18 after that, did you ever receive any indication from Officers
19 Sowers and Berrios that something was found?

20 A Yes.

21 Q And how was that received? Did you receive that over the
22 radio?

23 A Yes.

24 Q And what was said to you?

25 A I believe, "We got it."

1 And I said, "Thank you."

2 Q And at that time when that communication was made, where
3 were you?

4 A Still across the street.

5 Q And so you were across the street in an empty parking lot?

6 A Yes.

7 Q West of the area where the Getty Mart is?

8 A It'd be across the street and west, yeah.

9 Q Now, with respect to the -- with respect to the searches of
10 Mr. Abdul-Alim, there were two searches of Mr. Abdul-Alim, is
11 that correct?

12 A I believe so.

13 Q So there was the first search where nothing was uncovered,
14 is that correct?

15 A Full frisk, yes.

16 Q Okay. And that was a search conducted by Officer Sowers?

17 A Yes.

18 Q And then there was a second search conducted by Officer
19 Berrios and the gun was allegedly found at that time, is that
20 correct?

21 A Yes.

22 Q Okay. The fact that there were two separate searches, that
23 there was one search where no weapon was found, that's not
24 contained in your police report, is it?

25 A I believe I described it as they conducted a thorough

1 search.

2 THE COURT: I'm sorry. They conducted what?

3 THE WITNESS: A thorough search.

4 BY MR. ROBINSON:

5 Q So the language that you used in the police report was that
6 the officers did a thorough search, is that correct?

7 A Yes.

8 Q But you didn't indicate that they didn't find anything on
9 their first search?

10 A That's correct.

11 Q Okay. And that information was also not relayed to the
12 grand jury, is that correct?

13 A That's correct.

14 Q During the course of the events on December 9, 2011, were
15 you in contact with federal law enforcement?

16 A I believe I contacted my supervisor at the FBI later on.

17 Q And who's your supervisor at the FBI?

18 A Robert Lewis.

19 Q And when did you make contact with him?

20 A Shortly after the arrest. I don't recall exactly when.

21 Q Was that while --

22 THE COURT: I'm sorry. You made contact with him shortly
23 after the arrest?

24 THE WITNESS: Yes.

25 THE COURT: What further did you say?

1 THE WITNESS: I'm not sure exactly how long.

2 BY MR. ROBINSON:

3 Q Was that while Mr. Abdul-Alim was still at the scene?

4 A It might have been.

5 Q And what did you relate to Mr. Hoos (phonetic)?

6 A Who?

7 Q Did you say Robert Hoos (phonetic)?

8 A Robert Lewis.

9 Q Lewis. Excuse me.

10 What did you relate to Mr. Robert Lewis?

11 A That I was out with an arrest of Mr. Abdul-Alim.

12 Q And did he say anything to you in response?

13 MR. FLANNERY: Objection, your Honor. This perhaps is
14 relevant at trial, but I don't see how this is relevant for the
15 purposes of this motion.

16 THE COURT: How is this relevant to probable cause for the
17 arrest? Do you want to make an offer of proof?

18 MR. ROBINSON: No, your Honor. I'll move on.

19 THE COURT: Okay. The objection is sustained.

20 MR. ROBINSON: Your Honor, I think at this time I am
21 finished with this witness. I have no further questions.

22 THE COURT: No further questions?

23 MR. ROBINSON: Yes.

24 THE COURT: All right.

25 Any redirect?

1 MR. FLANNERY: No, your Honor.

2 THE COURT: All right. Thank you, sir. You may step down.

3 THE WITNESS: Thank you, sir.

4 (Witness excused.)

5 THE COURT: All right.

6 MR. FLANNERY: Commonwealth calls Angel Berrios.

7 CLERK DOLAHER: Officer, if you could just stop and raise
8 your right hand, please.

9 (Witness sworn.)

0 THE WITNESS: Yes, sir.

1 CLERK DOLAHER: Thank you.

2 ANGEL BERRIOS, Sworn

3 THE COURT: Good afternoon.

4 You may proceed.

5 MR. FLANNERY: Thank you..

DIRECT EXAMINATION

BY MR. FLANNERY:

Q Good afternoon.

A Good afternoon, sir.

Q Could you please state your name?

A Officer Angel Berrios.

Q And can you tell us what you do for a living?

A Springfield police officer.

Q And how long have you --

A Eighteen years.

1 Q Officer Berrios, I'd like to draw your attention back to the
2 evening of December 9, 2011, and first ask whether you were on
3 duty that evening?

4 A Yes, sir.

5 Q And what shift were you working at the time?

6 A Four to 12.

7 Q And can you tell us at about -- at some point between seven
8 and 7:30 that evening whether you were contacted by either
9 dispatch or Officer Ronald Sheehan or both?

10 A Dispatch.

11 Q Was that the first contact you had?

12 A Correct.

13 Q Okay. And at some point -- well, let me back up. What did
14 dispatch tell you?

15 A To assist with ascertaining information from a subject
16 for --

17 THE COURT: I'm sorry, sir. I'm going to have to ask you
18 to --

19 A Assist in getting information from a --

20 BY MR. FLANNERY:

21 Q Did dispatch tell you who you were --

22 THE COURT: One moment. Let me just finish.

23 MR. FLANNERY: I'm sorry.

24 THE COURT: I was interrupted.

25 THE WITNESS: Yes.

1 THE COURT: Officer, thank you. I'm going to ask you to
2 move the microphone just a little closer to you. You don't have
3 to speak right into it.

4 THE WITNESS: Okay.

5 THE COURT: And keep your voice up because I'm having
6 difficulty hearing you.

7 THE WITNESS: No problem.

8 THE COURT: Thank you.

9 BY MR. FLANNERY:

10 Q Did you learn from dispatch who you were going to be
11 assisting?

12 A Yes.

13 Q And who was that?

14 A Officer Sheehan.

15 Q And based on that dispatch, did you travel to a particular
16 location?

17 A Yes, sir.

18 Q And where was that?

19 A I believe it's 521 State Street, Getty gas station parking
20 lot.

21 Q Okay. So the Getty gas station parking lot on State Street
22 in Springfield?

23 A Correct.

24 Q And did you get there by way of cruiser?

25 A Marked cruiser.

1 Q And were you driving?

2 A Yes, sir.

3 Q And who was with you?

4 A Officer Tony Sowers.

5 Q Now, as you were traveling towards that location, did you
6 have an opportunity to speak to Officer Sheehan?

7 A No, sir.

8 Q Okay. Were you given instructions by dispatch as you
9 were --

10 A Correct.

11 Q -- approaching that location?

12 A Yes, on our computer.

13 Q Okay. And can you tell us what you were being told to do?

14 A Apparently, there was a white Jeep that we were supposed
15 to -- was involved in a drug transaction. We were supposed to
16 ascertain the operator's information.

17 Q Okay. And did you take that to mean you were supposed to
18 stop the vehicle?

19 A The vehicle just -- the vehicle was already stopped.

20 Q Okay. Well --

21 A It was in the area parked in the parking lot.

22 Q All right. But as you were approaching -- I'm just asking
23 what your understanding was of what you were supposed to do.

24 A Ascertain the driver's information.

25 Q All right. So when you got to that location, the Getty gas

1 station, I think you've already testified that you observed the
2 vehicle that you were then told to identify?

3 A Correct.

4 Q And what did you do?

5 A Approached the vehicle and attempted to get his information.

6 Q Okay. Did you park your cruiser somewhere first?

7 A Yes.

8 Q And where did you park your cruiser?

9 A Right behind it.

10 Q So that was in the --

11 A In the parking lot.

12 Q The parking lot of that gas station?

13 A Adjacent to it, yes.

14 Q Okay. And at that point did you have any direct
15 communication with Officer Sheehan?

16 A No.

17 Q Okay. So you -- then, I take it, you got out of your
18 cruiser, right?

19 A Correct.

20 Q And did Officer Sowers come with you?

21 A Yes, sir.

22 Q And what did you do?

23 A Gathered -- asked the subject to give us some information,
24 what he was doing there, and I just tried to get his information,
25 identify him.

1 Q Okay. So you both walked up to the driver?

2 A Approached the vehicle, yes, sir.

3 Q And what happened next?

4 A The subject was taken out of the vehicle and we just had him

5 sit next to the vehicle while we checked all the records to make

6 sure everything was legit.

7 Q Okay. So you were running his --

8 A Correct.

9 Q -- license and registration?

10 A Yeah.

11 Q At some point did you communicate with Officer Sheehan?

12 A At one point while we were dealing with the subject on the

13 ground, Officer Sheehan advised me that a subject approaching us

14 was in possession of a gun.

15 Q And how did he advise you of that? How did he communicate

16 that?

17 A Via radio.

18 Q And did you know where he was?

19 A I had no idea where he was.

20 Q Okay.

21 A I knew he was in the area, but I didn't know where he was.

22 Q All right. But he communicated with you via radio --

23 A Correct.

24 Q -- about this person who was approaching you?

25 A Correct.

1 Q And did he describe that person?

2 A Yes.

3 Q And do you recall what the description was?

4 A A subject with a red jacket, black male, red jacket.

5 Q Okay. Did you know from which direction this person was
6 heading?

7 A No.

8 Q Okay. Did you see this person?

9 A He walked right behind me and got right up on me.

10 Q Was that -- how soon after you spoke to Officer Sheehan did
11 that happen?

12 A Right away, instantly. As soon as he was approaching us, I
13 was advised.

14 Q Okay. Was there anyone else around this person?

15 A No.

16 Q And so what did you do?

17 A As soon as we said that, officer safety, turned around, the
18 subject was a foot away from me, if that, and we just grabbed --
19 got a hold of him and just ascertained him only for officer
20 safety because I was advised that he was carrying --

21 Q I understand. You don't have to explain why.

22 A Okay.

23 Q Just tell us what you did.

24 So after Officer Sheehan told you there was a person who he
25 identified and who he told you he had a gun, you see this person

1 and you say you grabbed him --

2 A Correct.

3 Q -- you and Officer Sowers. Do you see that person here in
4 the courtroom?

5 A Yes.

6 Q Okay. Can you identify him for us?

7 A The subject right here.

8 Q Well, if you could just --

9 A Right here.

10 Q -- make reference to an article of clothing or what he's
11 wearing?

12 A I can't see. Suit, striped suit.

13 MR. FLANNERY: Your Honor, may the record reflect
14 identification?

15 THE COURT: The record will reflect that he's identified the
16 defendant.

17 BY MR. FLANNERY:

18 Q So when you say that you and Officer Sowers grabbed the
19 defendant, can you tell us what you mean by that?

20 A Just soft contact, just to control him, make sure he don't
21 reach for a weapon, nothing, officer safety, just trying to --

22 Q Okay.

23 A -- control the situation.

24 Q What did you grab?

25 A I believe it was the right hand and waist, and Sowers did

1 the same thing, just in an escort --

2 Q Okay.

3 A -- position.

4 Q So you didn't put him on the ground or --

5 A No.

6 Q Okay. So what did you do after you grabbed him in that
7 manner?

8 A We pat frisked him for weapons.

9 Q Did you pat frisk him right where you grabbed him or did you
10 move him to some --

11 A At the rear of the cruiser.

12 Q -- other location?

13 A No. Right -- right where we had him controlled in the rear
14 of the cruiser.

15 Q Now, when you say we pat frisked him, who did that? Did you
16 pat frisk him or did Officer Sowers?

17 A I pat frisked him and I was the one who located the weapon.

18 Q Okay. But did you pat -- did Officer Sowers also pat frisk
19 him?

20 A Yes, sir.

21 Q And who pat frisked first? Was that --

22 A Sowers.

23 Q Okay. So Officer Sowers conducted the first pat frisk?

24 A Correct.

25 Q Okay. And that was -- where was that in relation to your

1 cruiser?

2 A We were in the rear of our cruiser.

3 Q Okay.

4 A Right in the trunk area.

5 Q All right. So is that where you grabbed the defendant? Was
6 he there already or did you move him to that location?

7 A No, no. He -- when we grabbed him, that's where we placed
8 him, in the back of the cruiser for control.

9 Q Okay.

10 A Outside the cruiser.

11 Q Outside the cruiser. Okay. And it was Officer Sowers who
12 initially pat frisked him?

13 A Right.

14 Q And did you observe that?

15 A Yes, sir.

16 Q Okay. And did Officer Sowers indicate whether he found
17 anything after that initial pat frisk?

18 A Right. He stated that he didn't have nothing on him.

19 Q Okay. Now, did you communicate that to Officer Sheehan?

20 A Sheehan said to give a thorough pat search on him.

21 Q Okay. Well, did --

22 A I was asked by Sheehan -- excuse me. Like earshot away,
23 just get away. He says, check him good, that it's a reliable
24 source.

25 THE COURT: I'm sorry. Could you repeat that. I didn't

1 understand.

2 THE WITNESS: Officer Sheehan directed me to give a thorough
3 pat frisk.

4 BY MR. FLANNERY:

5 Q Now, was that after you told him that Officer Sowers' pat
6 frisk hadn't --

7 A Correct.

8 Q -- yielded anything?

9 A Correct.

10 Q And, again, you're still communicating with Officer Sheehan
11 via radio, right?

12 A Correct.

13 Q And so after you communicated with Officer Sheehan about the
14 results of the first pat frisk, you testified that you
15 conducted --

16 A Correct.

17 Q Or I don't want to put words in your mouth. Did --

18 A No. I did.

19 Q Okay. So that's when you conducted the pat frisk?

20 A Correct.

21 Q And was that in the same location?

22 A Same location.

23 Q And what happened when you pat frisked the defendant?

24 A I'm on his right side. As I put my hand down the center of
25 his back towards the groin area, I -- the thorough search, I

1 could feel something in there, put my hand down the front, I
2 could feel a weapon. At that time we secured him and cuffed him.
3 I said, "He has a weapon, weapon, gun."

4 Q Okay. Now, you watched Officer Sowers. Did you see whether
5 he pat frisked in that area?

6 A I just think it wasn't adequate.

7 Q Okay. And when you say -- can you tell us with as much
8 specificity as possible where you felt what you believed to be a
9 firearm?

10 A In the groin area, more towards the front.

11 Q Okay. And, again, can you tell us what about what you felt
12 made you believe that it was a firearm?

13 A Small, steel, heavyset weapon, steel material between there
14 and --

15 Q Okay.

16 A You know, it's obvious that it's nothing, an organ or
17 nothing, but it was a weapon.

18 Q Have you had occasion to pat frisk other people --

19 A Absolutely.

20 Q -- looking for weapons? And in your career as a police
21 officer, have you --

22 A Absolutely.

23 Q -- found weapons in that way?

24 A Yes, sir.

25 Q And was the feel of what you believed to be a weapon

1 consistent with other firearms that you've found in that manner?

2 A Yes, sir.

3 Q Now, once you made that discovery -- now, at this point the
4 pat frisk was over the clothing?

5 A Outer garment.

6 Q Okay. And you reported that you had found what you believed
7 to be a gun?

8 A Correct.

9 Q And you indicated at that point you -- did you put
10 handcuffs?

11 A Yes, sir.

12 Q And what did you do next?

13 A Placed him in the back of the cruiser.

14 Q Okay.

15 THE COURT: I'm going to interrupt you just for a moment.

16 To my court personnel, is there any issue if we go to 4:30?

17 All right. I'm sorry. Go ahead.

18 BY MR. FLANNERY:

19 Q And I'm sorry. You put handcuffs on the defendant?

20 A Yes, sir.

21 Q And what did you do next?

22 A Placed him in the back of our cruiser.

23 Q Okay. At that point had you retrieved this what you
24 believed to be a firearm?

25 A Once the subject was in the cruiser, I just unzipped the

1 front of his pants and there it was.

2 Q Okay. Why did you put him in the cruiser?

3 A Just to control him.

4 Q Okay. And when you unzipped his pants and looked in the
5 spot where you felt what you believed --

6 A The firearm was right there.

7 Q Okay. And can you tell us what you found? Can you describe
8 what you found?

9 A Found a small handgun, .22-caliber handgun. I was kind of
10 concerned that it might have had one in the chamber. I wasn't
11 sure. So we had to be pretty careful.

12 Q Did you check it?

13 A That's why I wanted to get him in the car before removing it
14 and not doing it outside.

15 Q Okay. So when you retrieved the gun, did you check it to
16 see if it was loaded?

17 A Yes.

18 Q And do you recall what you found?

19 A A clip with several rounds in it.

20 Q And did you or Officer Sowers communicate that to Officer
21 Sheehan?

22 A Yes, sir.

23 Q Now, was that communication at that point by radio, if you
24 recall?

25 A I believe so.

1 Q Okay. At some point did Officer Sheehan actually arrive at
2 that scene?

3 A Yes, sir. Moments later, when he was advised that there was
4 a weapon located, he showed up.

5 Q Okay. Now, just a few questions about that area. At that
6 point, back in December of 2011, were you familiar with that
7 area, that neighborhood?

8 A Yes, sir.

9 Q And were you aware of any reports of criminal activity or
10 arrests that would have occurred not too far back from December
11 of 2011?

12 A Very dangerous area.

13 Q Okay. And could you be more specific?

14 A Community policing officer up there for like five years
15 prior to that, and guns, gangs, drugs. State and Terrence is
16 high crime, one of our worst spots' in the city.

17 MR. FLANNERY: I have nothing further.

18 THE COURT: All right. Cross?

19 MR. ROBINSON: Thank you.

20 CROSS-EXAMINATION

21 BY MR. ROBINSON:

22 Q I believe you testified you were in a marked cruiser on
23 December 9, 2011, is that correct?

24 A Yes, sir.

25 Q And you were in uniform, is that --

1 A Yes, sir.

2 Q And you had your duty belt and badge?

3 A Yes, sir.

4 Q And your sidearm, is that correct?

5 A Full uniform, yes.

6 Q Okay. With your sidearm?

7 A Yes, sir.

8 Q Okay. And you were conducting an I.D. check of the operator
9 of the white Jeep, is that correct?

10 A Correct.

11 Q And you indicated that you took that operator out of the
12 vehicle?

13 A Correct.

14 Q And you conducted a search of that vehicle, isn't that
15 correct?

16 A Not the vehicle.

17 Q There was no search conducted of the white Jeep?

18 A No.

19 Q There was no sweep of the area within the driver's control?

20 A We were just ascertaining his information.

21 Q And you learned that that individual was Abdul Latif
22 Tangreti (phonetic), is that correct?

23 A The subject in the Jeep?

24 Q Yeah.

25 A No. That was not him.

1 Q The gentleman who was in the white Jeep, his name was not
2 Abdul Latif Tangreti (phonetic)?

3 A I don't recall his name.

4 Q Now, you were given information about a possible narcotics
5 transaction, is that correct?

6 A Correct.

7 Q Involving a white Jeep?

8 A Correct.

9 Q You were never given any information prior to your encounter
10 with Mr. Abdul-Alim about Mr. Abdul-Alim, is that correct?

11 A Correct..

12 Q Now, you had received a message over your mobile data
13 terminal inside your cruiser prior to this arrest, is that
14 correct?

15 A Yes, sir..

16 Q Okay. And the mobile data terminal, that's essentially a
17 laptop inside a cruiser?

18 A Correct.

19 Q And you can receive messages from dispatch on that?

20 A Yes, sir.

21 Q And the message that you received from dispatch, what did
22 that say?

23 A There were several messages. I can't recall. I can't --
24 you know, all it was was ascertain the information of the subject
25 in the Jeep and there's possibly a gun involved and drugs.

1 Q And was that essentially all of what was contained in the
2 messages that you received from dispatch about this
3 investigation?

4 A Correct.

5 Q And was that in more than one message?

6 A I can't remember. It's been a couple years.

7 Q Okay. And you performed some records checks on the driver
8 of the white Jeep, is that correct?

9 A I believe my partner did.

10 Q Okay. And you did that using the mobile data terminal?

11 A I'm not sure if he did it on the mobile data or over the
12 radio, the records. We have two options.

13 Q Okay. And did you also perform a records check with respect
14 to Mr. Abdul-Alim?

15 A I believe my partner did.

16 Q So you saw -- after you received a message from -- a radio
17 message from Officer Sheehan advising you about Mr. Abdul-Alim,
18 you saw him walking down the street, is that correct?

19 A Walking directly behind me. It wasn't a message. It was
20 over the radio on a different channel, asked me to be earshot
21 away, and he told me, he says, "Subject's right behind you with a
22 red jacket." That's how I came in contact with him.

23 Q Okay. So you saw him approaching and you had your back
24 turned to him at that time?

25 A Well, I could see him in my peripheral vision just coming

1 right up on me, right next to me.

2 Q And he was walking on the sidewalk at that time, is that
3 correct?

4 A Right, walking in between the vehicles.

5 Q Okay. On the sidewalk?

6 A No. The sidewalk was to our left and the parking lot was to
7 our right, and he was walking right through the parking lot.

8 Q He was walking through the parking lot area?

9 A Yeah. They're adjacent to each other, but specifically he
10 was walking through the parking lot, through the cars.

11 Q And when you saw Mr. Abdul-Alim, your attention was drawn to
12 him because of the radio communication from Mr. Sheehan, is that
13 correct?

14 A Correct.

15 Q And aside from -- strike that.

16 When you saw him, you didn't notice that he was walking in a
17 strange manner, is that correct?

18 A As soon as I was advised the subject with a gun was right
19 behind me, he was -- I was right on him. He's right next to me.
20 I just grabbed him. I did not see him walking, nothing. He was
21 just right up on me. For officer safety, that's why we grabbed
22 him right away, he was so close.

23 Q So you didn't have any opportunity to observe him before you
24 received that radio message?

25 A Correct.

1 Q Okay. And what was exactly told to you about Mr. Abdul-Alim
2 in that radio message?

3 A "Subject in a red jacket is the one in possession of the
4 gun, right behind you."

5 Q Okay. And it was after you received that you
6 immediately -- you and Officer Sowers both went over to him, is
7 that correct?

8 A He was right with us. We just grabbed him. I grabbed him
9 right away and my partner was right next to me.

10 Q Okay. And you had indicated that you had one hand on one of
11 his hands and Officer Sowers had one hand on his other hand?

12 A Escort position, yes, sir.

13 Q And then your other hand was what, on his back?

14 A Just controlling him. One arm probably on his back,
15 shoulder, just so he can't run on us. He wasn't in restraints,
16 so he had options.

17 Q So at that point you were holding him, you and Officer
18 Sowers. You then escorted him, walked him from where he was over
19 to the back of the police cruiser, is that correct?

20 A Correct.

21 Q Okay. Now, you had indicated that Officer Sowers then
22 conducted a pat frisk, is that right?

23 A Sure.

24 Q Okay. And after that pat frisk was conducted, Mr.
25 Abdul-Alim was then put in the back of the cruiser, isn't that

1 correct?

2 A Negative. That's when I got another radio transmission from
3 Sheehan to say that he's the one with the gun, to do a thorough
4 pat frisk. I've been in corrections a long time, as well as
5 police, and more experience, and just did a thorough pat frisk
6 and located the weapon.

7 Q When Officer Sowers was conducting his pat frisk, you were
8 present, though, is that correct?

9 A Yes, sir.

10 Q And you indicated that you were observing it, is that
11 correct?

12 A I was watching him, keeping an eye on him, controlling him.

13 Q So you were holding him at that time?

14 A Yes, sir.

15 Q Okay. So Officer Sowers was right next to you conducting
16 that frisk?

17 A Yes, sir.

18 Q Okay. But you did not indicate to Officer Sowers that he
19 should be more thorough in his search, is that correct?

20 A Negative, no.

21 Q Okay.

22 A I was paying attention to him.

23 MR. ROBINSON: Your Honor, at this time I would like to play
24 the turret recording and have this witness identify some voices
25 on that recording.

1 THE COURT: All right.

2 BY MR. ROBINSON:

3 Q So, Officer Berrios, I'm going to play you a recording and
4 I'm going to ask you if you can identify any of the voices that
5 are in this recording and if you recall any of the events
6 associated with it.

7 (Springfield Police Department turret recording is played
8 beginning at 4:09:53 and transcribed as follows.)

9 [DISPATCHER: Springfield Police. This line is
10 recorded. How can I help you?

11 ZEBRA 8: Hey, this is Zebra 8. Can you give me -- put
12 me through to the dispatcher to put out a call over
13 the screen Winchester Square (indiscernible at 4:10:14).

14 DISPATCHER: Okay. Hold on.]

15 (Recording paused at 4:10:17.)

16 BY MR. ROBINSON:

17 Q Do you recognize that voice?

18 A Yes, sir.

19 Q And who does that voice belong to?

20 A Officer Sheehan.

21 Q Okay.

22 (Recording resumes at 4:10:30.)

23 [DISPATCHER: (Indiscernible at 4:10:30).]

24 ZEBRA 8: Hey, this is Zebra 8. I'm heading over to
25 State and Terrence area.

1 DISPATCHER: Okay.

2 ZEBRA 8: The Getty station. There's a -- look,
3 can you put it out over the computer, don't put it out over
4 the air (indiscernible at 4:10:41), so it's going to be a
5 white Cherokee. That's going to be a white Jeep, possibly a
6 Cherokee, leaving the area of the Getty station on State
7 Street. If -- if there's a cruiser in the area that you
8 have close, can you dispatch him to stop the car in regards
9 to a narcotics investigation (indiscernible at 4:11:01).

10 DISPATCHER: Yeah. I can give him a call without
11 saying anything over the air, so maybe that's to
12 Foxtrot 1.

13 ZEBRA 8: Yeah. If you could do that, that'd be great.

14 DISPATCHER: Yeah. No. I'll send them over there now.

15 ZEBRA 8: All right. Thank you.

16 DISPATCHER: All right. You're welcome.]

17 (Recording paused at 4:11:14.)

18 BY MR. ROBINSON:

19 Q So did you, in fact, receive a message from dispatch that
20 was not sent out over the air?

21 A Correct.

22 Q Okay. And was that the message to your mobile data
23 terminal?

24 A Yes.

25 (Recording resumes at 4:11:36.)

1 [DISPATCHER: Foxtrot 1.

2 FOXTROT 1: (Indiscernible at 4:11:42).

3 DISPATCHER: In just a minute I'm going to send you a
4 call (indiscernible at 4:11:49).

5 FOXTROT 1: Okay.

6 ZEBRA 8: Foxtrot 1, after you review that call, go
7 onto 8.

8 FOXTROT 1: Okay. Fox 1's on 8.

9 ZEBRA 8: I'm just getting into the neighborhood. I'm
10 going to look for that vehicle and just when you've located
11 that, I need it stopped and the driver checked out for
12 I.D.]

13 (Recording paused at 4:12:26.)

14 BY MR. ROBINSON:

15 Q And was that voice Officer Sheehan?

16 A Yes, sir.

17 Q Okay. Was that message directed to you?

18 A Yes.

19 Q And Officer Sowers?

20 A Yes, sir.

21 (Recording resumes at 4:12:38.)

22 [FOXTROT 1: Okay.

23 ZEBRA 8: If you locate it, take it away from the
24 station. We're going to do that down the road.]

25 (Recording paused at 4:12:49.)

1 BY MR. ROBINSON:

2 Q And was that you indicating that the vehicle had been
3 located?

4 A I'm not sure. Can you play that back?

5 (Recording resumes at 4:13:01.)

6 [ZEBRA 8: -- you've located that, I need it stopped
7 and the driver checked out for I.D.

8 FOXTROT 1: Okay.

9 ZEBRA 8: If you locate it, take it away from the
10 station. We're going to do that down the road.]

11 (Recording paused at 4:13:21.)

12 BY MR. ROBINSON:

13 Q Are you able to identify that?

14 A I believe that's Sheehan saying if it's located. I think
15 that's still Sheehan.

16 Q Okay.

17 A My partner was the one who agreed. Sowers said, "Okay."

18 Q So the voice saying, "Okay," that is Sowers?

19 A Correct.

20 (Recording resumed at 4:13:40.)

21 [FOXTROT 1: K.]

22 ZEBRA 8: Hey, I just made a couple of passes.

23 (Indiscernible at 4:13:48).

24 ZEBRA 8: 8. That vehicle's in the parking lot now and
25 I'm trying to get an eyeball on it and see when it leaves.

1 Foxtrot 1, did you copy? I'm sorry. Foxtrot 1, did
2 you copy?

3 FOXTROT 1: K.

4 DISPATCHER: 88-4.

5 88-4: 4.

6 DISPATCHER: 88-4, 145 Mary Covert (phonetic) Road.

7 (Indiscernible at 4:14:52) location, 233 at 1960.]

8 (Recording paused at 4:15:00.)

9 BY MR. ROBINSON:

10 Q Is that an unrelated matter?

11 A Yes.

12 (Recording resumed at 4:15:07.)

13 [FOXTROT 1: (Indiscernible at 4:15:07).]

14 DISPATCHER: Yes, sir. Foxtrot 1.

15 FOXTROT 1: Go ahead. Foxtrot is on 8.

16 ZEBRA 8: Hold on before you approach that vehicle. Is
17 there somebody at the car right now?]

18 (Recording paused at 4:15:52.)

19 BY MR. ROBINSON:

20 Q Okay. Is that the voice of Officer Sheehan?

21 A Yes, sir.

22 Q And when he's saying -- asking you if there's someone at the
23 car right now, who is he referring to?

24 A The operator of the Jeep.

25 Q The operator of the white Jeep?

1 A Yes, sir.

2 (Recording resumed at 4:16:08.)

3 [FOXTROT 1: Negative. We just rolled up on it.]

4 (Recording paused at 4:16:14.)

5 BY MR. ROBINSON:

6 Q So you had just -- was that your voice?

7 A That's Tony. I'm the -- I'm the driver. That will
8 eliminate a lot of -- Tony'll handle the radio the whole time.

9 Q Okay. So Officer Sowers is saying there's no operator in
10 that vehicle?

11 A Correct.

12 Q Okay.

13 (Recording resumed at 4:16:29.)

14 [FOXTROT 1: Yeah. Stand by.

15 ZEBRA 8: Okay. There's a subject, a male subject,
16 beard, black, he's got a handgun in his waistband out there.
17 What was he wearing?]

18 (Recording paused at 4:16:47.)

19 BY MR. ROBINSON:

20 Q Okay. And that's the voice of Officer Sheehan?

21 A I believe so.

22 Q And he is informing you that there's a black male with a gun
23 in his waistband, is that correct?

24 A Yes, sir.

25 Q Okay.

1 (Recording resumes at 4:17:08.)

2 [ZEBRA 8: He's (indiscernible at 4:17:13).]

3 FOXTROT 1: Okay. He's wearing jeans and a blue
4 hooded sweatshirt, the (indiscernible at 4:17:22) got in the
5 car.

6 ZEBRA 8: The guy that's walking right up to the car
7 now, grab that, right there, the one in the red.]

8 (Recording paused at 4:17:24.)

9 BY MR. ROBINSON:

10 Q That was Officer Sheehan directing you to grab the
11 individual who's wearing red walking away --

12 A Correct.

13 Q -- from the car, is that correct?

14 A Well, alongside of it. The --

15 Q But the word that he used was "away from the car," is that
16 correct?

17 A Yeah. Walking in our direction away from the Jeep. That's
18 what he meant.

19 (Recording resumes at 4:17:52.)

20 [ZEBRA 8: He's just walking around the car.

21 (Indiscernible at 4:18:07), you on 8?

22 FOXTROT 1: That's the one. We got that guy.]

23 (Recording paused at 4:18:17.)

24 BY MR. ROBINSON:

25 Q And is that Officer Sowers indicating that you had Mr.

1 Abdul-Alim in custody?

2 A Correct.

3 Q Okay.

4 (Recording resumes at 4:18:26.)

5 [ZEBRA 8: Does he have a weapon on him? Are you on
6 8?]

7 (Recording paused at 4:18:35.)

8 BY MR. ROBINSON:

9 Q Previously, that was Sheehan asking if he's got a weapon on
10 him?

11 (Recording resumed at 4:18:42.)

12 [FOXTROT 1: Hey --]

13 (Recording paused at 4:18:43.)

14 A Yes, sir.

15 (Recording resumed at 4:18:45.)

16 [FOXTROT 1: No weapon.]

17 (Recording paused at 4:18:48.)

18 BY MR. ROBINSON:

19 Q And was that Officer Sowers indicating that he did not have
20 a weapon on him?

21 A Correct.

22 (Recording resumed at 4:18:54.)

23 [ZEBRA 8: Is he in earshot? Can you step away from
24 him?]

25 (Recording paused at 4:19:08.)

1 BY MR. ROBINSON:

2 Q So at that point Officer Sheehan is asking you or asking
3 Officer Sowers if Mr. Abdul-Alim is in earshot, is that correct?

4 A If he was in earshot, yes, if he could step away.

5 Q Okay.

6 (Recording resumed at 4:19:24.)

7 [FOXTROT 1: K. Go ahead.

8 ZEBRA 8: Check his underwear. Tony, you on 8? Foxtrot
9 1, you on 8?

10 FOXTROT 1: K.

11 ZEBRA 8: Foxtrot 1, you on 8?

12 FOXTROT 1: All right, 8.

13 ZEBRA 8: Did he have it in the other location?

14 FOXTROT 1: K.

15 ZEBRA 8: Thank you.]

16 (Recording stopped at 4:20:45.)

17 BY MR. ROBINSON:

18 Q So that was Officer Sheehan asking Officer Sowers if he had
19 that in that location, is that correct?

20 A Correct.

21 Q And Officer Sowers' response, "Okay"?

22 A It's, "K."

23 Q "K."

24 MR. ROBINSON: Your Honor, at this time I'm done with the
25 recording.

1 THE COURT: All right. Thank you.

2 Do you have much more with this witness?

3 MR. ROBINSON: If I can have just a moment to confer with my
4 client? I don't think so, your Honor.

5 THE COURT: Thank you.

6 BY MR. ROBINSON:

7 Q So just in terms of the position of where the vehicles were
8 on December 9th in the Getty Mart, the white Jeep, that had
9 parked in a space and that was perpendicular to the west side of
10 683 State Street, is that correct?

11 A Yes, sir.

12 Q Okay. And then you had pulled up your cruiser behind that,
13 is that correct?

14 A Off to the side.

15 Q Off to the side?

16 A South side of the vehicle.

17 Q But you had positioned your vehicle so that that vehicle
18 could not back away, isn't that correct?

19 A No. The vehicle could back away.

20 Q You weren't in any way --

21 A I wasn't --

22 Q -- blocking that vehicle from moving out of that position?

23 A Negative.

24 Q Okay. So you had driven your vehicle, what, perpendicular
25 past that vehicle and stopped?

1 A The vehicle was in a parking spot. I just pulled along the
2 right side of the vehicle behind it off to the right.

3 Q Off to the right?

4 A Yes. There was a sidewalk. It was almost parked on the
5 sidewalk. It was right by the phone.

6 | Q Okay.

7 MR. ROBINSON: I have nothing further, your Honor.

8 THE COURT: All right. Thank you.

9 Did you have anything on redirect?

10 MR. FLANNERY: Just a couple very brief questions.

REDIRECT EXAMINATION

12 BY MR. FLANNERY:

13 Q Officer Berrios, the radio that you were using to
14 communicate with Officer Sheehan, where was that located?

15 A My personal radio?

16 Q Yes.

17 A I have a mike right on my shoulder and the radio itself is
18 attached to my duty belt.

19 Q Okay. So where the sound comes out and I guess what you
20 talk into is on your shoulder?

21 A The mike is on my shoulder, yes.

22 Q Okay. And do you know whether Officer Sheehan was talking
23 to anyone else while he was communicating with you?

24 A No.

25 Q Okay. But at some point he asked you to step away from the

1 defendant as he was talking to you on this radio?

2 A Correct. He wanted to keep it private.

3 MR. FLANNERY: Nothing further.

4 THE COURT: Any recross?

5 MR. ROBINSON: No, your Honor.

6 THE COURT: All right. Thank you, sir. You may step down.

7 THE WITNESS: Thank you, sir.

8 (Witness excused.)

9 THE COURT: All right. So at this point it's almost 4:30.

10 Were there additional witnesses who are going to be called?

11 MR. FLANNERY: Your Honor, there's another officer who was
12 at the scene, Officer Sowers. The Court has already heard
13 testimony about him. I suspect that if I don't call him, the
14 defense will.

15 MR. ROBINSON: That's true, your Honor.

16 THE COURT: Yeah. I apologize for my earlier confusion as
17 to who was going to be calling witnesses. I think the ball is
18 now being placed in your court. You don't intend to call any
19 additional witnesses, is that correct?

20 MR. FLANNERY: Well, your Honor, I think if it's the defense
21 intent to call Officer Sowers, then I would call him. I would
22 conduct the direct and let the defense conduct cross-examination
23 of him. I assume that we don't have time for that today, even if
24 I --

25 THE COURT: I think not.

1 Was it your intention to call Officer Sowers?

2 MR. ROBINSON: It was, your Honor. In fact, I have him
3 under subpoena, so yes.

4 THE COURT: So now it's your intention to call Officer
5 Sowers?

6 MR. FLANNERY: Yes.

7 THE COURT: All right. It's interesting.

8 How about if we resume tomorrow, if that's convenient for
9 counsel. Excuse me for a moment.

10 Mr. Dolaher, do we know what the list looks like for
11 tomorrow? I haven't looked at the projected list.

12 CLERK DOLAHER: I think it should be okay, Judge.

13 THE COURT: What do you think? Schedule this for 11?

14 CLERK DOLAHER: Yeah.

15 THE COURT: So if I schedule this to resume tomorrow at 11
16 o'clock, would that work for both of you?

17 MR. FLANNERY: I think that will be fine, your Honor. If I
18 could just have a brief moment to check with Officer Sowers.

19 THE COURT: Sure.

20 MR. FLANNERY: I believe he's summonsed in for tomorrow, in
21 any event, because there's a trial in front of Judge McDonough
22 that he's involved with. I suppose the only complication is that
23 in the event that we call him in at the same time, we'll have to
24 work that out. But if I could just have a moment?

25 THE COURT: All right. Thank you.

1 MR. FLANNERY: That's fine, your Honor.

2 THE COURT: All right. So then this matter will be
3 continued to tomorrow morning at 11 o'clock. And we anticipate
4 just one more witness?

5 MR. FLANNERY: I believe so.

6 MR. ROBINSON: I believe so, yes, that's it, your Honor.

7 THE COURT: Very good. We'll see you all tomorrow at 11.

8 (Hearing in recess at 4:27 p.m.)

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4:11:42 4:11:49 4:13:48 4:14:52 4:15:00 4:15:07
4:17:13 4:17:22 4:18:07

COMMENTS: A Springfield Police Department turret tape was played during this hearing,
which accounts for the many "indiscernibles." Parts of the recording were poor quality.

C E R T I F I C A T E

I, Barbara A. Reardon, an Approved Court Transcriber, do hereby certify that the foregoing is a true and accurate transcript from the audio recording provided to me of the Hampden Superior Court proceedings* in the matter of Commonwealth v. Ayyub Abdul-Alim held on November 21, 2013.

I, Barbara A. Reardon, further certify that the foregoing is in compliance with the Administrative Office of the Trial Court Directive on Transcript Format.

I, Barbara A. Reardon, further certify that I neither am counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken, and further that I am not financially nor otherwise interested in the outcome of the action.

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